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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re N.L., a Person Coming Under the  
Juvenile Court Law.

B212422  
(Los Angeles County  
Super. Ct. No. CK 74096)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

W.L. et al.,

Defendants and Appellants.

APPEAL from orders of the Superior Court of Los Angeles County, Margaret S. Henry, Judge. Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and Appellant W.L.

Nancy O. Flores, under appointment by the Court of Appeal, for Defendant and Appellant L.S.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Denise M. Hippach, Associate County Counsel, for Plaintiff and Respondent.

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Mother and father appeal from the juvenile court's jurisdictional and removal orders for their three-year-old daughter, N.L. Both parents assert (1) insufficient evidence supports the juvenile court's exercise of jurisdiction over the minor under Welfare and Institutions Code section 300,<sup>1</sup> and (2) the child was improperly removed from the parents' custody under section 361 because there was no clear and convincing evidence of substantial danger to the child's physical or emotional well-being. We affirm, concluding the juvenile court properly exercised jurisdiction over the child and substantial evidence supports the juvenile court's removal order.

## **FACTS AND PROCEDURAL HISTORY**

### ***1. Alleged Physical Abuse***

The minor lived with her parents in a single room at a hotel. On August 19, 2008, the minor appeared at her early childhood education center with a large bruise on her face, and the school summoned the police. The responding officers were told the child had an unexplained absence from school the day before and had arrived at school earlier that morning with a big circular bruise on her eye and cheek. The officers saw a bruise about two inches long on the child's left temple. The child told one of the officers she hit herself with a glass cup. The child then changed her story and stated her father punched her in the face with his fist. The officers were unable to obtain further details from the child because of her young age. The officers learned there were prior police reports regarding allegations of physical abuse of the child.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

The child was interviewed again at the abused child unit. At first, the child said her uncle hit her on the side of her head with a basket and caused the bruise; she then stated her father had hit her because she was eating too slowly, and she demonstrated what happened by hitting herself in the head with a closed fist.

An officer interviewed mother regarding the child's injury. Mother told the officer the child had put rice inside a glass during a meal and ignored mother when told to stop. Mother said she attempted to take the glass from the child, and the child tugged the glass back, hitting herself in the face. Mother told the officers father did not live in the home and denied that he hit the child.

The officers took the child to the Los Angeles County Department of Children and Family Services (Department). An investigating social worker observed oddly shaped bruises on the child's face, about three inches long and three inches wide. The bruises ran from the left side of the child's temple down the left side of her cheek and formed a wide "C." The bruises were yellow and brown in color and appeared to be healing.

Mother told the social worker the child had received the bruise the night before, on Monday evening, August 18. Mother repeated her story that the child hit herself in the face when mother attempted to take the glass cup away from the child. Mother said the child's temple began to swell, and mother applied ointment to the bruise immediately, and then an ice pack, after which the child fell asleep. Mother told the worker father was not home when the child received the bruise, that he was away delivering merchandise for his business.

Mother denied that father hit the child, and she asserted he did not return home until late in the evening, after the child was asleep, and he did not see the bruise until the following morning. Mother said she had kept the child home from school on Monday because the child had a cough. She did not take the child to a doctor because she was giving the child over-the-counter cough syrup. Asked to describe their disciplinary practices when the child misbehaved, mother stated that father would threaten to hit the child with a belt or scold her in a loud and stern voice and that mother disciplined the child by scolding or by gently slapping the child's hand.

When interviewed, father said he was not home during the incident. He said he was in the hotel lobby, doing business on the Internet. He claimed the child was awake and alert when he returned to their room, and she did not complain of any pain or discomfort. He did not see the injury until the following morning.

Father stated that the child had not attended school on Monday because mother did not have to work and had decided to spend “quality time” with the child. Father denied hitting his daughter claiming he disciplined her only by threatening her with a belt, spanking her with an open hand on her buttocks, verbally scolding her or placing her in “time out.” The social worker told father she was informed by the child’s teacher that the child cried when father came to pick her up from school and refused to leave with him. Father denied that was the case and stated the child was always happy to see him and went home with him without any problems.

The child was taken for a physical examination at the LAC + USC Medical Center on Tuesday evening, August 19. The nurse practitioner who examined the child found her to be very intelligent for a three year old, outgoing and very articulate for her age. From their appearance, the nurse practitioner concluded the bruises on the child’s face were more than 24 hours old, contrary to mother’s statement that the injury occurred the previous evening. The nurse concluded the bruises were “suspicious for physical abuse.”

## ***2. Detention and Section 300 Petition***

The Department took the child into protective custody on August 19 and afterward filed a section 300 petition on the child’s behalf.

The petition alleged that father physically abused the child by slapping her face, causing bruises, on or about August 18, 2008, and struck her on prior occasions. The petition also alleged mother failed to take action to protect the child and that the parents had a history of domestic violence in that father had struck mother with a belt in front of the child, and such violent conduct endangered the child’s physical and emotional well-being. (§ 300, subds. (a), (b).)

### *A. Prior Referrals*

Before this incident, there were three referrals to the child abuse hotline that alleged the child was neglected and physically abused.

In October 2007, it was reported the child had a red mark on her right leg, which the child said was the result of mother hitting her with a belt. Mother admitted hitting her child and expressed remorse. The allegation of physical abuse was determined to be inconclusive.

In March 2008, there was another hotline referral after the child arrived at her day care with a red mark in the shape of a hand on the left side of her face. The child was booked in as a victim of suspected child abuse by the police and photographs were taken of her injuries. A social worker went to the home on a followup visit and discovered the minor, then two years old, had been left at home alone. After a neighbor located her, mother rushed home stating she had left the child in father's care. For that referral, allegations of substantial risk of harm were determined to be unfounded, allegations of physical abuse were determined to be inconclusive and a newly added allegation of caretaker absence was found to be substantiated. The family received three months of family preservation services from the Department. Mother only partly complied with the services, and father never participated at all declaring mother was "in charge" of that matter. Father claimed he was never told to participate in the services and in any case he was too busy to deal with such appointments.

On August 1, 2008, the Department received the third referral for the minor. The child purportedly had stated her father hits her on the legs and mother had admitted father verbally abused the child. A social worker interviewed the child at the early childhood education center and found her free of marks or bruises. The child told the worker her father yelled at her when she got into trouble and he spanked her once on the "butt." She said her parents yelled at each other but she was not afraid when they yelled. She reported seeing her father hit her mother with a "correa" (belt) and hearing him call her mother "estupida" (stupid). Mother denied that the child was hit or yelled at by father saying he sometimes may "come off" too hard. She stated the child was only verbally

reprimanded or placed in “time out” and no physical discipline was used. She denied any domestic violence but admitted she and father often argued about their financial situation, usually when the child was in school. Father denied hitting the child and stated he only spanked her occasionally with an open hand on the “butt.” Mostly, he placed the child in a time out in the corner or gave her stern directions. The family was offered, but they declined to participate in, the partnership for families program that provided six months of in-home family preservation services. Father stated he was “too old” to participate and be taught how to be a father. This last referral was in the process of being closed as inconclusive for emotional abuse and unfounded for physical abuse, when the incident at issue occurred.

#### *B. Detention Hearing*

The juvenile court held a detention hearing on August 22, 2008, and ordered the minor detained. The Department was ordered to provide mother and father with referrals for anger management, parenting classes and individual and family counseling to address appropriate discipline techniques. The Department was also ordered to provide referrals to domestic violence classes for victims for mother and domestic violence counseling for offenders for father.

#### *C. Jurisdictional and Dispositional Report*

For the jurisdictional and dispositional hearing, the Department reported that mother’s story of how her child received the latest bruises was inconsistent with the physical findings. Mother stated the bruise was caused about 8:00 p.m. on Monday, August 18. The physical examination performed about 7:30 p.m. on Tuesday, August 19, indicated the bruising had occurred more than 24 hours before the examination. The parents also had inconsistent and vague stories of what occurred over the prior weekend. Mother said the family spent most of Sunday together, but father said he was alone with the child because mother worked all day Sunday. Father stated he was under the impression mother took the child to the doctor on Monday, but mother said she did not take the child to the doctor but instead took off work to stay home with the child that day.

The social worker believed the parents were protecting each other and they did not wish to tell the truth about how the child received her bruises.

The social worker concluded the prior referrals to the child abuse hotline, as well as the child's statements, indicated she was a victim of physical and emotional abuse. In her interview with the social worker, the child attempted to tell the worker different stories or one story concerning a door, mother crying, the child crying, father hitting the child, father hitting mother, mother leaving and some papers. The worker concluded the child was too young to "put the pieces together with her words" but there was reason to believe she was a victim of abuse.

#### *D. Subsequent Information for Court Officer*

Subsequently, in an information for the court officer, the Department reported that mother told a social worker father was anxious and stressed about not having contact with his older children from a previous marriage and that when father becomes stressed he "takes it out on [mother]" by insulting her, calling her "boba" (dumb). Mother said she reacted to father's behavior by crying. Mother stated the child was alone with father from the end of her school day until mother returned from work after 9:00 p.m., and mother did not know what went on while she was at work. According to the child's teacher, the child became emotionally distressed when father came to pick her up at school.

In a further information for the court officer, the Department reported that a criminal history for father reflected he had several prior convictions, including a felony conviction in 1996, and a successful termination of a drug court deferred judgment in February 2008.

### ***3. Contested Jurisdictional and Dispositional Hearing***

The juvenile court held a contested jurisdictional and dispositional hearing on October 9, 2008. Both parents testified at the hearing.

### *A. Mother's Testimony*

Mother testified the child bruised her face accidentally when she was attempting to keep mother from taking away her cup during a meal. Mother stated the bruise started to swell after about a minute and she got scared.

The incident occurred, according to mother, on a Monday evening between 7:30 and 8:00. She stated father was not present, as he had left sometime in the morning and did not return until 15 minutes after the incident occurred. Father did not notice any mark on the child's face, and the child did not say anything to him about being hit with a cup. Mother took the child to school the next day and explained to the assistant school principal what had happened the night before with the cup. Mother stated that father was surprised the next morning when he woke up and saw the mark on the child's face. He asked her, "What happened to the baby on her face?"

Mother testified she had never seen father strike the child in the face and, if she ever witnessed that, the first thing she would do is call the police. Mother never told the child to lie to the police about how she got the mark on her face. Mother denied there was domestic violence between her and her husband.

Mother admitted that father struck her with a belt, but she claimed it was done playfully, "kind of like a joke." She maintained that was "[j]ust the way that we . . . do things sometimes," stating father "liked that part of [her] body" and "[t]hat's why he's either punching it or doing something else." She testified she was fully clothed when he struck her, and he hit her softly causing no pain.

Mother admitted she previously struck her daughter with a belt, saying it was an accident. The tip of the belt struck the child on the leg when the child attempted to grab the belt as mother was putting it on. The school called the police after a red mark was seen on the child's leg. Mother admitted she told the police she had hit the child with a belt. Mother stated the school called the police again in March about a mark on her child's face. Mother stated this was only a "rash" and that the child was taken to the hospital without mother's presence. She told the police officers at the time that the child



fell and hit her face on furniture. She admitted telling the officers that father did not live with them, she did not know where he lived and she only knew his phone number.

Mother acknowledged that she and father argued in front of the child about bills that needed to be paid. She denied it became physical and claimed they would only talk loudly for a few minutes.

Mother testified the child did not attend school on the Monday so she could take the child to a specialist for a foot problem, but the doctor was not in that day.

#### *B. Father's Testimony*

Father denied hitting his daughter. He stated he left home at 7:00 a.m. on Monday, worked out at the gym for about two hours, ran errands and either met with clients or made purchases for his business the rest of the day. He watched television that evening and was not aware of the bruise on the child's face until the next morning. He asked mother what happened, and mother explained the child had hit herself on the temple with a coffee mug while trying to keep mother from taking it away. He said he rarely spanked the child, and then only on the buttocks with an open hand. Most of the time, he just raised his voice. He admitted he would threaten to take off his belt and spank the child as they do in the movies if she did not behave but stated he had never actually done so.

Father denied any domestic violence with mother. They had little arguments but nothing abusive. Some of the arguments were in the child's presence out of necessity, because they lived in one small room. He did admit to striking mother with a belt, like a "love tap," whenever she wore short pants or underwear. This happened in front of the child once or twice. The child sometimes said, "hey don't hit my mom," and mother would explain they were "just playing."

#### *C. Jurisdictional and Dispositional Orders*

The juvenile court found the parents were not credible, stating, "[o]ne consistency throughout the reports is the inconsistency of what they have to say." The court found by a preponderance of the evidence that the allegations of the petition were true and that the child was a person described in section 300, subdivisions (a) and (b). The court also

found, by clear and convincing evidence, that there was a substantial danger to the physical health, safety and protection, or physical or emotional well-being of the child if she were returned home, and there was no reasonable means by which her physical health could be protected absent removal from the home. The court therefore found cause to remove the minor from the parents' home under section 361.

In making its findings, the court examined pictures showing the child's injury and explicitly found her injury was not from a cup, observing, "[t]o get into this indentation between the eye, it had to be something flexible like a hand or a fist hitting her. It does not look like a cup."

The juvenile court ordered family reunification services for the parents. Mother signed the court ordered disposition case plan, but father refused to do so, saying, "I don't know why I'm taking those classes."

Both parents timely appealed from the juvenile court's jurisdictional and dispositional orders.

### **STANDARD OF REVIEW**

"When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact." (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.) We review the entire record and view the evidence in the light most favorable to the court's findings and conclusions. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733.) On appeal from an order based upon clear and convincing evidence, the clear and convincing standard disappears and we apply the customary rule of conflicting evidence, giving full weight to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581; *Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 881.)

The parent has the burden of showing there is no evidence of sufficiently substantial character to support the court's order. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.)

## DISCUSSION

### ***1. Substantial Evidence Supports Exercise of Jurisdiction over the Minor***

A minor may be declared a dependent of the juvenile court when she has suffered, or there is a substantial risk that she will suffer: (1) serious physical harm inflicted nonaccidentally upon the child by her parent (§ 300, subd. (a)); or (2) serious physical harm or illness, as a result of the failure or inability of her parent to adequately supervise or protect the child or the willful or negligent failure of her parent to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left (§ 300, subd. (b)).

Under section 300, subdivision (a) a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child, or a combination of these and other actions by the parent that indicate the child is at risk of serious physical harm. This definition is equally applicable to subdivision (b) of section 300. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 823.) A finding under section 300, subdivision (b) requires (1) neglectful conduct by the parent; (2) causation; and (3) serious physical harm or illness to the child, or a substantial risk of such harm or illness. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396, citing *In re Rocco M.*, *supra*, at p. 820.)

We find substantial evidence to support the juvenile court's assertion of jurisdiction over this young child. The evidence showed that the minor suffered serious physical injury at the hands of father and that mother failed to protect her child from such harm. The child had a large "C" shaped bruise to the left side of her face and temple, which the child indicated to the police officers and social workers was caused by a blow from her father. The juvenile court rejected mother's claim that the bruise was caused by the child hitting her face with a cup. The court specifically found that "[t]o get into this indentation between the eye, it had to be something flexible like a hand or a fist hitting her." The medical examiner found the injury suspicious for physical abuse, based on a history of mother reporting that the child fell on a glass "last night," the child disclosing to the examiner when shown a photo of herself that the child in the photo was "hit," and

the appearance of the bruise indicating it was more than 24 hours old, contrary to mother's assertions. The child reported to the police that her father had hit her and indicated she was scared of him. The record before the court also established that after being taken into care the child repeatedly told her foster mother her father had hit her, demonstrated a hit to the side of her head and stated she did not wish any contact with father.

The record further shows there were several prior referrals for this family, in which it was alleged the child was being physically abused and neglected. Although the prior referrals did not result in detention or a petition, they are some indication this family had continuing issues of abuse. Mother and father told markedly conflicting stories about the circumstances of the child's present injury and obviously tried to cover up for each other.

There was substantial evidence of domestic violence between the parents as well. Father was verbally abusive to mother. He admittedly repeatedly struck mother with a belt, although he claimed the child was mistaken in believing he was beating her mother, and both parents tried to minimize his conduct as a "joke" or just "love taps." The record discloses that during an interview with the social worker, mother repeatedly raised the issue of domestic violence, inquiring what services were available to a victim and whether a child would be allowed to go with a mother into a shelter.

This is more than a "scintilla" of evidence or a "conjecture" of physical abuse as father asserts. Furthermore, there was ample evidence for the juvenile court to conclude there was domestic violence, despite mother's portrayal of father's role as mere "sexual play-acting" and father's claim such abuse was purely "speculative."

Father asserts that this court should reverse any unsupported findings, even if dependency jurisdiction may be upheld otherwise. However, we review the lower court's ruling, not its reasons for ruling. We will affirm a juvenile court judgment when, as here, the evidence supports the decision on any one of several grounds. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.) We do not reverse for error unless, after examining the entire cause including the evidence, it appears reasonably probable that appellant would

have obtained a more favorable result absent the error. (*People v. Watson* (1956) 46 Cal.2d 818, 836; *Khan v. Medical Board* (1993) 12 Cal.App.4th 1834, 1841; *In re Jonathan B.*, *supra*, at p. 876.)

## **2. There Is Substantial Evidence to Support the Removal Order**

Pursuant to section 361, the juvenile court may issue orders limiting parental control over a minor found to be described by section 300. A child may not be removed from the parents' custody unless the court finds clear and convincing evidence of a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being and there are no other reasonable means to protect the child. (§ 361, subd. (c)(1).) The juvenile court in this case specifically found, by clear and convincing evidence, the minor child was at substantial risk of serious harm if she were to be returned to the parents' home.

Mother contends the juvenile court did not consider alternatives to removal, such as having mother live separately from father. Father argues the sustained counts did not show the child would be at risk if returned to his care. Both mother and father cite *In re Henry V.* (2004) 119 Cal.App.4th 522 (*Henry V.*) in support of their contentions.

In *Henry V.*, the court found a single incident of physical abuse was insufficient to support a removal order when there was "ample evidence that appropriate services could have been provided to [mother] and [child] in the family home. The social worker acknowledged that in-home bonding services were available [to assist mother], and that unannounced visits and public health nursing services were potential methods of supervising an in-home placement." (*Id.* at p. 529.) The social worker recommended an out-of-home placement primarily to obtain the mother's future cooperation with the social worker. (*Id.* at pp. 529-530.) In *Henry V.*, there was also no indication in the record that either the agency or the juvenile court understood the necessity of making the dispositional findings on clear and convincing evidence. (*Id.* at p. 530.)

Here, there were multiple allegations of abuse in the past and evidence the child had suffered physical and emotional injury on more than one occasion. There was no evidence any measure short of removal would protect the minor if she were returned

home to the parents' care. The family had been offered voluntary services in the past and failed to benefit from proffered voluntary services in the case of mother or refused to attend, or even to acknowledge a need to attend, offered classes in the case of father. An out-of-home placement was not being proposed primarily to obtain the parents' cooperation in complying with the case plan. And, unlike in *Henry V.*, the juvenile court in this case expressly indicated on the record that it understood the standard for removal was clear and convincing evidence.

Mother argues she could have moved in with a relative or the Department should have relocated her to a shelter. However, mother never asked the court to consider such a placement and, although mother testified she would move in with a relative "instantly" if her daughter could be returned, there was no evidence mother had made any effort to do so in the past or, if the child were returned to her custody, that she could protect the child in the future. The social worker reported it appeared mother was not willing to leave father and continued to deny any domestic violence between them.

The juvenile court therefore did not err in removing the child from the parents' home.

### **DISPOSITION**

The orders are affirmed.

FLIER, Acting P. J.

We concur:

BIGELOW, J.

BENDIX, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.